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# Message Text

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ACTION SNM-05

INFO OCT-01 ARA-14 ISO-00 L-03 PPTE-00 CA-01 SCS-06
CIAE-00 INR-10 IO-14 JUSE-00 NSAE-00 CTME-00
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FM AMEMBASSY SANTIAGO
TO SECSTATE WASHDC 9972
INFO DEA HQS WASHDC

UNCLAS SANTIAGO 5574

HQS FOR R. EYMAN, DNA; STATE ATTN: P. WOODRING, S/NM AND R. STEVEN, ARA;

FROM A/SAIC CASTILLO

E. O. 11652: N/A
TAGSC CI, SNAR
SUBJECT: NARCOTICS LAWS

REF: A) STATE 170187 (R 061446Z JUL 78) B) 77 SANTIAGO 2375

1. POSSESSION
A. IN TERMS OF PENALTIES, CHILEAN NARCOTICS LAW MAKES AN IMPORTANT DISTINCTION BETWEEN DRUGS IT CONSIDERS (1) VERY HARMFUL (HEROIN, COCAINE, HCL, BASE/SULFATE, COCA LEAVES, AMPHETAMINES, BARBITURATES, OPIUM, MORPHINE, MORPHINE BASE AND HALLUCINOGENS) AND (2) MARIJUANA, WHICH IS PLACED IN A CATEGORY OF "DRUGS THAT DO NOT PRODUCE GRAVE TOXIC EFFECTS OR CONSIDERABLE HARM TO PUBLIC HEALTH." WHILE PENALTIES FOR POSSESSION IN BOTH CATEGORIES OF DRUGS RANGE FROM A MINIMUM SENTENCE OF FIVE YEARS AND ONE DAY TO A MAXIMUM OF 15 YEARS, PLUS NOMINAL FINES RENGING FROM US $176.49 TO US $1,764.93, CHILEAN JUDGES HAVE CONSIDERABLE FLEXIBILITY IN REDUCING THE SENTENCE FOR THE SECOND CATEGORY (MARIJUANA) IF IT IS ESTABLISHED
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THAT THE DRUG WAS FOR PERSONAL USE. IN DETERMINING PERSONAL CONSUMPTION, THE JUDGE WEIGHS SUCH FACTORS AS THE QUANTITY OF MARIJUANA SEIZED, THE CIRCUMSTANCES UNDER WHICH IT WAS SEIZED, AND MEDICAL REPORTS. SHOULD THE OFFENDER ESTABLISH THE MARIJUANA WAS FOR PERSONAL CONSUMPTION, THE JUDGE THEN SETS THE SENTENCE AT BETWEEN 61 AND 540 DAYS. THE JUDGE MAY ALSO REFER THE OFFENDER TO A REHABILIATION CENTER FOR TREATMENT. NO SUCH FLEXIBILITY IS

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EXERCISED FOR CATEGORY (1) DRUGS.
B. AMOUNT: THERE IS NO QUALIFYING AMOUNT FOR OPERATION OF OFFENSE.
C. PENALTIES: PENALTIES FOR POSSESSION ARE THE SAME AS OTHER NARCOTICS OFFENSES DUE TO THE FACT GOC CONSIDERS POSSESSION TO BE EQUAL TO TRAFFICKING.

2. TRAFFICKING
A. CONSOLIDATION: CHILEAN LAW CONSOLIDATES ALL CONTROLLED SUBSTANCES IN A GENERAL TRAFFICKING OFFENSE EXCEPT AS NOTED IN (1-A) ABOVE.
B. PENALTIES: THE MINIMUM PENALTY FOR CATEGORY (1) DRUGS IS 5 YEARS AND 1 DAY -- NO MAXIMUM ALTHOUGH IN PRACTICE, FIRST OFFENDERS RARELY RECEIVE MORE THAN 15 YEARS. BAIL IN MOST INSTANCES IS AVAILABLE AT JUDGE'S DESCRETION TAKING INTO COONSIDERATION PRIOR CRIMINAL RECORD OF SUSPECT, AMOUNT OF NARCOTICS INVOLVED, ETC. AGAIN, DEPENDING ON DETAILS OF CASE, PRIOR CRIMINAL RECORD OF SUSPECT, ETC., RELEASE AFTER SERVING 1/2 OF SENTENCE IS POSSIBLE THOUGH RARE.
C. ELEMENTS: MERE POSSESSION, SALE, CULTIVATION, AND/OR EXCHANGE OF DRUG, ETC., CONSTITUTE OFFENSE OR TRAFFICKING.
D. CONSPIRACY: THERE IS A CONSPIRACY CLAUSE IN CHILEAN LAW. THIS CLAUSE IS THE ONLY ONE OF ITS KIND IN CHILEAN LAW AND IS GENERALLY SIMILAR TO U.S. FEDERAL LAW. PENALTIES BY CUSTOM ARE GENERALLY LESS SEVERE THAN FOR OTHER NARCOTICS OFFENSES. (APPROXIMATELY 3-5 YEARS)
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3. CULTIVATION, PRODUCTION, ELABORATION
A. CULTIVATION OF CANNABIS, COCA AND OPIUM POPPIES IS PROHIBITED UNDER CHILEAN LAW.
B. OT APPLICABLE.
C. PENALTIES FOR ELABORATION OF SUBSTANCES ARE DESCRIBED IN (1-A)

4. FINANCIAL
A. FINANCIAL SUPPORT: DEPENDING ON DETAILS OF THE CASE, FINANCIAL SUPPORT FOR CULTIVATION, ELABORATION, ETC., COULD BE CONSIDERED TRAFFICKING OR CONSPIRACY TO TRAFFICK.
B. CURRENCY CONTROL LAWS: THERE ARE CURRENCY CONTROL LAWS ON EXPORT OF CURRENCY AND FOREIGN BANK ACCOUNTS ETC. AT PRESENT THEY ARE DIFFICULT TO ENFORCE BECAUSE GOC PERMITS ANY CITIZEN TO PURCHASE UP TO $1,500.00 (USC) PER MONTH. DETAILS OF RESTRICTIONS BEING RESEARCHED AND WILL FOLLOW UPON COMPLETION.

5. CRIMINAL PROCEDURE
A. INVESTIGATIVE DETENTION: BY LAW, SUSPECT MUST BE TAKEN BEFORE JUDGE WITHIN 24 HOURS FOLLOWING ARREST. (FOLLOWING MONDAY IF DETAINED FRIDAY EVENING). IN PRACTICE, SUSPECT MAY

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BE HELD 2 OR 3 DAYS PRIOR TO BEING TEKEN BEFORE JUDGE. (IN THIS
INSTANCE, NO CONSULAR ACCESS WOULD BE PERMITTED).
NORMALLY EMBASSY CONSUL IS NOTIFIED SHORLTLY AFTER DETENTION.
B. PRE-TRIAL DETENTION: THERE IS NO CUSTOMARY LENGTH
OF PRE-TRIAL DETENTION. SUSPECT IS DETAINED, TAKEN TO JUDGE,
AND DEPENDING ON COURT CALENDAR, TRIAL PROCESS BEGINS SHORTLY
THEREAFTER. DEPENDING ON THE GRAVITY OF THE CHARGES, THE
DEFENDANT MAY BE RELEASED UNDER BOND WHILE AWAITING TRIAL.
C. TRIAL PROCESS: AVERAGE LENGTH OF TRIAL PROCESS IS 1
YEAR INCLUDING TRIAL, REVIEW/CONFIRMATION PROCEEDING. THE APPELLATE
PROCESS GENERALLY IS 2 MONTHS.
D. LEGAL CONSUL: PUBLIC DEFENDERS ARE NOT APPOINTED BY
THE COURTS IN CHILE WHEN THE DEFENDANT IS UNABLE TO PAY THE
COST OF RETAINING A LAWYER. THE DEFENDANT NAY, HOWEVER, REQUEST
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THE JUDICIAL ASSISTANCE SERVICE OF THE COLLEGE OF LAWYERS TO
ASSIGN AN ATTORNEY TO HIS CASE AT NO COST. THE LAWYER ASSIGNED
USUALLY OVERSEES A STUDENT OF LAW TO ACTUALLY HANDLE THE MECHANICS
OF THE CASE. THERE ARE ADEQUATE LAWYERS TO TAKE NARCOTIC CASES,
BUT WE COMETIMES DOUBT THEIR QUALIFICATIONS. WE HAVE FOUND SOME
LAWYERS REMISS IN APPLYING A PROVISION OF LAW THAT WOULD BENEFIT
THEIR CLIENT'S CASE. THEIR FEES ARE SOMEWHAT HIGHER THAN FOR
OTHER CRIMINAL CASES.
E. CONDITIONAL LIBERTY: A PROVISION FOR CONDITIONAL LIBERTY
(PAROLE) DOES, IN PRACTICE, EXIST. DEPENDING ON CIRCUMSTANCE
OF CASE, PRIOR RECORD OF DEFENDANT, ETC., INDIVIDUAL MAY BE
RELEASED ON PAROLE AFTER SERVING 1/2 OF SENTENCE. THIS PROVISION,
HOWEVER, IS GENERALLY NOT USED.
F. EXPULSION: IT IS NOT CUSTOMARY TO EXPEL MINOR OFFENDERS.
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